Supreme Court, U. S.
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APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-5781

FRANK L. RAKAS AND LONNIE L. KING,
Petitioners,

—vs.—

PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

ON WRIT OF CERTIORARI TO THE APPELLATE
COURT OF ILLINOIS, THIRD DISTRICT

PETITION FOR CERTIORARI FILED NOVEMBER 25, 1977
CERTIORARI GRANTED MARCH 20, 1978

IN THE

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Petitioners,

—*vs.*—

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ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

February 4, 1975—Petitioner's arrested.

March 3, 1975—Preliminary hearing conducted in the Circuit Court of Kankakee County, Illinois.

March 21, 1975—Indictment returned by the Grand Jury of Kankakee County, Illinois charging Petitioners with armed robbery.

April 2, 1975—Petitioners arraigned and plead not guilty.

April 28, 1975—Motion to suppress evidence illegally seized filed by Petitioners.

May 1, 1975—Motion to suppress denied following hearing.

May 6, 1975—Jury trial commenced.

May 7, 1975—Jury returned guilty verdicts.

May 21, 1975—Motion for new trial denied.

June 17, 1975—Sentencing hearing conducted, Petitioner Rakas sentenced to a sixteen (16) to thirty (30) years term of imprisonment and petitioner King sentenced to an eight (8) to twenty-four (24) years term of imprisonment.

June 17, 1975—Notice of Appeal filed.

March 23, 1977—Opinion of the Appellate Court of Illinois, Third Judicial District.

April 13, 1977—Denial of Petition for Rehearing by the Appellate Court of Illinois, Third Judicial District.

September 30, 1977—Petition for Leave to Appeal denied by the Supreme Court of Illinois.

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

No. 75-CF-425

THE PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFFS,

vs.

FRANK L. RAKAS, AND LONNIE L. KING, DEFENDANTS.

BILL OF INDICTMENT

Filed March 21, 1975

COUNT I

The Grand Jury charges:

That on the 4th day of February, 1975, in the County of Kankakee and State of Illinois, FRANK L. RAKAS, and LONNIE L. KING, Defendants, committed the offense of ARMED ROBBERY in that said Defendants did, while armed with a dangerous weapon, to-wit: a rifle, take property, to-wit: lawful money of the United States, from the presence of Sylvia Kranich, by threatening the imminent use of force, in violation of Section 18-2 of Chapter 38 of Illinois Revised Statutes.

COUNT II

The Grand Jury further charges:

That on the 4th day of February, 1975, in the County of Kankakee and State of Illinois, FRANK L. RAKAS, and LONNIE L. KING, Defendants, committed the offense of ARMED ROBBERY in that said Defendants did, while armed with a dangerous weapon, to-wit: a rifle, take property, to-wit: the ignition key for a 1973 Plymouth automobile from the presence of Billy Glenn Woods by threatening the imminent use of force, in violation of Section 18-2 of Chapter 38 of Illinois Revised Statutes.

COUNT III

The Grand Jury further charges:

That on the 4th day of February, 1975, in the County of Kankakee and State of Illinois, FRANK L. RAKAS, and LONNIE L. KING, Defendants, committed the offense of ARMED ROBBERY in that said Defendants did, while armed with a dangerous weapon, to-wit: a rifle, take property, to-wit: a 1973 Plymouth automobile from the presence of Billy Glenn Woods by threatening the imminent use of force, in violation of Section 18-2 of Chapter 38 of Illinois Revised Statutes.

A TRUE BILL

(signed) _____
Foreman

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

MOTION TO SUPPRESS EVIDENCE
ILLEGALLY SEIZED

Filed April 28, 1975

[Caption Omitted in Printing]

Now comes the Defendants, FRANK L. RAKAS and LONNIE L. KING, and pursuant to the Illinois Revised Statutes, Chapter 38, Section 114-12, moves this Honorable Court to suppress as evidence illegally seized from the Defendants' presence or person on or about February 4, 1975, the following items:

> A gun, ammunition, United States currency, clothing and any other thing obtained by unlawful search and seizure by Peace Officers of the State, County or local governmental units of Illinois; the search being of the person of the Defendants and of an automobile occupied by said Defendants.

This Motion is made on the grounds that the search and seizure of the aforementioned items without a warrant was illegal for the following reasons:

1. On or about February 4, 1975, at about the hour of 9:45 P.M., the Defendants, FRANK L. RAKAS and LONNIE L. KING were passengers in a motor vehicle, to-wit: an automobile driven by one Johnetta M. Clontz.
2. That on said date at about 9:45 P.M., the driver, Johnetta M. Clontz, of said vehicle, a 1970 purple Plymouth bearing Illinois 1974 license plate number RT 6237, was lawfully and peaceably operating said vehicle on a public highway, being in a Southerly direction on Illinois Route 50 approximately .1-.2 of a mile North of the Robert Hall Road in Kankakee County.

3. That at about the above time and place said automobile was stopped by Peace Officers of the State, County and local governmental units; neither the driver nor any of the occupants of said automobile were violating any Statute, law or ordinance regarding the operation of any motor vehicle in the State of Illinois.
4. That at the time and place said automobile was stopped by Peace Officers, said stopping was made without any probable cause to do so.
5. That all four occupants, including the Defendants, were ordered out of said automobile at gun point; that all four occupants complied, at which time said automobile was searched thoroughly, including the trunk, by Peace Officers.
6. That during the search of said automobile, certain evidence was found, to-wit: a gun, ammunition, United States currency, clothing, and other items; that the Defendants assert that said search and seizure was made without any search warrant or legal authority whatsoever.
7. That the aforementioned search was not made incident to a lawful arrest.
8. That no one, including the Defendants, gave permission or authority to any Peace Officer to search said automobile.
9. That none of the evidence seized at the time and place of said search, was in plain view of said Peace Officers.
10. That at the time of the aforesaid search and seizure, said Peace Officers had no warrant for the arrest of said Defendants nor for the search and seizure, and had no reasonable grounds for believing that the Defendants were committing or had committed an offense and had no reasonable grounds for searching the Defendants or said automobile occupied by said Defendants.
11. That the aforesaid search and seizure, in view of the facts stated above, was in violation of the rights of the Defendants and of the Fourth, Fifth and Fourteenth Amendments of the United States

Constitution and of the Constitution of Illinois, Article Two, Sections 2, 6 and 10 and of the Illinois Revised Statutes, Chapter 38, Article 107 and 108.

In support of this Motion, the Affidavit of Allen C. Kuester, is attached hereto, incorporated herein and filed herewith.

FRANK L. RAKAS AND
LONNIE L. KING,
Defendants,

By (signed) _____
ALLAN C. KUESTER,
Their Attorney

STATE OF ILLINOIS)
) ss
COUNTY OF KANKAKEE)

ALLEN C. KUESTER being first duly sworn deposes and says that he is the Attorney for the Defendants, FRANK L. RAKAS and LONNIE L. KING, in the above entitled cause; that he has read the foregoing Motion and has knowledge of the contents thereof, and that the same are true and correct to the best of his information, belief and knowledge.

(signed) _____
ALLAN C. KUESTER

[Jurat Omitted in Printing]

[Proof of Service Omitted in Printing]

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

HEARING ON MOTION TO SUPPRESS

Transcript of Proceedings

Conducted May 1, 1975

TESTIMONY OF FRANK L. RAKAS

DIRECT EXAMINATION

By Mr. Kuester [defense counsel]:

[R103] Q. Please state your name?
A. Frank L. Rakas.
[R104] Q. And where do you reside, sir?
A. Kankakee County Jail.
Q. How old are you?
A. Twenty-eight.
Q. Calling your attention to February 4, 1975 at about the hour of 9:45 p.m., do you recall where you were?
A. Yes, sir.
Q. And where were you?
A. I was driving down Route 50, passenger in the car, coming towards Kankakee down Route 50 from Manteno.
Q. Within Kankakee County?
A. Yes.
Q. How many people in the car with you?
A. Four.
Q. Did you know who the four were?
A. Yes.
Q. Who was the driver?
A. Miss Janette M. Clontz.
Q. Who was the front seat passenger?
A. Lonnie King.
Q. Where were you located?
A. Driver's side in the back seat.

Q. Who else?
A. Mary Ann Jackson.
Q. Where had you been coming from at that time?
A. R & W Lounge in Manteno.
Q. And on Route 50 what occurred at that time about 9:45 p.m.?
[R105] A. We was pulled over by approximately five squad cars and told to get out of the car.
Q. And at that time did you have any knowledge of whether anyone was violating any motor vehicle laws?
A. No, sir, I didn't.
Q. What happened at the time the car was pulled over?
A. We was removed from the car at gun-point and told to stand with our hands on top of the automobile. We was searched and the car was searched.
Q. Prior to the car being searched were all four of you removed from the vehicle?
A. Yes, sir.
Q. Where were you removed to?
A. The front lefthand fender.
Q. What about Lonnie King?
A. I believe he was on the right side front fender.
Q. What about the two women?
A. They was in front of the automobile but I don't believe they had put their hands on it.
Q. At the time you were removed what happened to you after you were removed?
A. Told me to place my hands on top of the car and spread my feet apart and was searched.
Q. Did you see the other three occupants also searched?
A. Yes, I did.
Q. Was anything removed from you at that time?
[R106] A. From my person?
Q. Yes.
A. No, sir.
Q. Did anybody say anything or tell you what they were doing?
A. No.

Q. What happened immediately after you and the others were searched?
A. They searched the automobile.
Q. Where did they search the automobile?
A. The whole automobile.
Q. The trunk area also?
A. I believe so. I believe the trunk was open.
Q. At the time they conducted the search of the car did anyone place you under arrest or say those words?
A. No sir.
Q. Then what happened next?
A. Handcuffed and put in the squad car and brought to the County Jail.
Q. Did anyone say anything to you at that time?
A. No, sir.
Q. Did anyone—yourself included—give anyone permission to search the vehicle that you know of?
A. No.
Q. Did you give permission?
A. No. I wasn't asked.
Q. Do you know whether or not any items were removed from the interior of that car?
[R107] A. Yes.
Q. Do you know what was removed? See it?
A. Yes.
Q. What was removed, if you know?
A. Sawed-off rifle and a box of shells.
Q. Did you see where these items were removed from the vehicle?
A. The shells were removed from the glove box and the rifle from underneath the seat.
Q. Was the glove box locked or unlocked at the time?
A. It was locked.
Q. Did anyone at any time say you were under arrest?
A. No, sir.
Q. Could you describe the car you were occupying at that time?
A. It was a 1970 purple Roadrunner. I am not positive about the model of the car.

Q. Did you know the license number of that car?
A. No, I didn't.
MR. KUESTER: That is all the questions I have.
THE COURT: Mr. Herzog.

CROSS-EXAMINATION

By Mr. Herzog [prosecutor]:

[R108] Q. Mr. Rakas, you said you were sitting in the back seat?
A. Yes.
Q. And the shells were taken from the glove box up in the front seat?
A. Yes.
Q. And the sawed-off rifle was taken out from underneath the front seat?
A. Yes.
Q. On the passenger side, isn't that right?
A. Yes.
Q. Whose car was that, sir?
A. Miss Clontz's.
Q. It wasn't yours, was it?
A. No.
Q. One other question. What color shirt were you wearing that night, sir?
A. Red.
Q. At that time?
A. Yes.
Q. All red, right?
A. Yes, sir. They have it here at the County Jail.
MR. HERZOG: Okay. No other questions.

REDIRECT EXAMINATION

By Mr. Kuester:

Q. In regard to—other than the red shirt—were you wearing pants?
[R109] A. Yes.
Q. What color were they?
A. Blue levis.
MR. KUESTER: That is all. Thank you, sir.

THE COURT: Call you next witness.
MR. KUESTER: I would like to call Lonnie L. King.

TESTIMONY OF LONNIE L. KING

DIRECT EXAMINATION

By Mr. Kuester:

Q. Please state your name.
A. Lonnie L. King.
Q. Where are you residing presently?
A. Kankakee County Jail.
Q. How old are you?
A. Thirty.
Q. Calling your attention to February 4, 1975 about the hour of 9:45 p.m., do you recall where you were?
A. I just left R & W Lounge In Manteno and was coming back to Kankakee.
Q. Were you in an automobile at that time?
A. Yes, I was.
Q. Who was with you at that time?
A. Mary Ann Jackson, Frank Rakas and Johnette Clontz.
Q. Were you driving or someone else?
A. Johnetta was driving and I was on the righthand side in the front.
[R110] Q. Do you recall where you were at 9:45 p.m.—what road or route?
A. I think Route 50—I am not sure.
Q. What happened at about that time?
A. Well, we were just driving along and the next thing I knew there was squad cars all around us and they had shotguns and I think there was a rifle pointed at us too.
Q. Then what happened? Was the car stopped?
A. Yes, they stopped it and pulled in front of it and alongside it.
Q. What happened when the car was stopped in regard to you?
A. They held the guns on us and told us to get out one at a time.

Q. Did you do so?
A. Yes, we did.
Q. Did everybody get out of the car?
A. Yes.
Q. When you got out of the car what happened?
A. I was placed on the righthand side fender and told to keep my hands on the car and was searched and Frank was made to get on the lefthand side and the two girls were in front.
Q. Did anyone say anything to you why you were stopped and searched?
A. No, sir.
Q. Did you see any activity in the car after you were stopped regarding police officers?
A. Yes, sir, I did.
[R111] A. Two officers going through the front of the car, looking through the glove box, up under the seats, and they just made a thorough search. I saw at least one of the officers open the glove box and then they come to the trunk and was going through the stuff.
Q. Did anyone of you in your hearing give anyone permission to search that vehicle or any part of it?
A. Nobody even asked permission.
Q. Did anyone show you or produce a search warrant or arrest warrant?
A. No, sir.
Q. What happened after the vehicle was searched?
A. My handcuffs were placed on me and I was put in a squad car where I sat with the other occupants and we were brought to the Kankakee County Jail.
Q. Did anyone tell you why you were brought there?
A. No, sir.
MR. KUESTER: That is all. Thank you.
THE COURT: Mr. Herzog.

CROSS-EXAMINATION

By Mr. Herzog

Q. What color color shirt were you wearing?
A. Light blue.

Q. What kind of car were you driving?
A. I wasn't driving the car.
Q. What kind of car was it you were riding in?
A. 1970 Plymouth Roadrunner—purple.
[R112] Q. Whose car was it?
A. Janette Clontz—I went with her when she bought it.
Q. Her name is Jeannette Clontz, is that right?
A. Yes.
Q. And there were four people in that car, isn't that right?
A. Yes.
MR. HERZOG: No further questions.

(Witness excused)

THE COURT: Call your next witness.
MR. KUESTER: I would like to call Donald Sollers to the stand.

TESTIMONY OF DONALD SOLLERS

DIRECT EXAMINATION

By Mr. Kuester

Q. Would you please state your name and occupation?
A. Donald Sollers, Manteno City Police Department, County of Kankakee.
Q. Calling your attention to February 4, 1975, sometime around the hour of 9:00 P.M., do you recall where you were?
A. Yes, on routine patrol in the Village of Manteno.
Q. Any particular location?
A. I believe, sir, I was on Route 50 at that time.
[R113] Q. Did you have occasion to go to or be in the vicinity of the R & W Lounge or Restaurant or whatever it is called?
A. Yes, sir.
Q. About what time were you there?
A. I believe it was a little before 9:00. I don't remember exactly what time it was.

Q. Did you have occasion to see that vehicle at that time?
A. Yes, sir, I did.
Q. Do you recall that vehicle in particular?
A. A purple Plymouth Roadrunner.
Q. Do you recall the license number?
A. I believe the license on that car was RT-6237.
Q. Illinois '74 plates?
A. Yes.
Q. How many people did you see in or about that vehicle?
A. Four people getting out of the vehicle—two white males and two white females, sir.
Q. Did you watch that car at that time?
A. Yes, sir, I did.
Q. And what did you do after watching it?
A. I had called the Sheriff's Office to obtain a better description of the people that was supposedly involved in the armed robbery at Robert Hall's and he said he didn't have too much at that time and for me to give him what I had.
Q. Can I back up just a moment?
A. Yes.
[R114] Q. Prior to seeing this particular purple Roadrunner had you had any prior information? Any radio information?
A. Yes, sir, I had.
Q. Who from?
A. From the dispatcher at the Sheriff's Office.
Q. Briefly what type of radio transmission did you receive?
A. A transmission that there was an armed robbery at Robert Hall Clothing Store, Route 50, and the people —two white males—had left in a blue Plymouth Roadrunner—the direction of travel was unknown at that time. The license was SA numbers unknown.
Q. Did you get any further description at that time as to the description of this blue Plymouth Roadrunner other than what you have told us?
A. Yes—white racing stripe down the side and damage to the right front I believe he said.

Q. Did they give the year of that car?
A. I believe it was a 1970.
Q. Did you have that in your report anyplace as to what year it was?
A. Yes, sir.
Q. Do you have that report with you today?
A. No, sir, I don't.
Q. But when you say 1970 are you sure it was a 1970 or is that what you think it was?
A. Yes, sir, 1970.
[R115] Q. You are sure.
A. 1970 blue Plymouth Roadrunner.
Q. You had a description of two white males, correct?
A. Yes.
Q. What was the description given as to those?
A. Dark pants and one wearing a blue shirt and dark jacket. This is all I got in the first description put out.
Q. White male. Any height?
A. I believe around 6 feet—160-170 pounds.
Q. After that radio transmission then you saw this vehicle around the R & W with four people coming out of it, correct?
A. Yes.
Q. What did you do after you saw those four people?
A. I went to the telephone and called the Sheriff's Office to try to get a better description of the people involved.
Q. Did they give you any further description?
A. No, sir, not at that time.
Q. What did you do then?
A. He asked for the description of the people in the car I had observed and I gave it to him.
Q. You related the information back to him by radio?
A. No, I was talking on the telephone.
Q. Who did you talk to?
[R116] A. The dispatcher at the Sheriff's Office.
Q. And you told them what the four people you had observed looked like?
A. Correct.

Q. Did you get any communication back from him?
A. Yes, the subject in the blue shirt did match the description of one of the suspects.
Q. And what did you do then?
A. He, the dispatcher, told me to stay with the car and watch it and they would send the Sheriff's car up there to talk to the people and check.
Q. What description did you give to the dispatcher of the four people you had observed?
A. The two subjects—the male was wearing white shoes and I believe levis, dark jacket. The other subject had a blue shirt, pullover type shirt, zipper type.
Q. When you got that information back were the persons still in the car—the four people?
A. No, sir, they were inside the R & W Restaurant.
Q. Did you do anything to stop or apprehend them at that time?
A. No.
Q. You waited until they got into the car?
[R117] A. As I waited for the Sheriff's car, the subjects came out and got in their car and proceeded southbound on Route 50.
Q. What did you do next?
A. I contacted the Sheriff's Office they had left the R & W and they advised me to continue following the car.
Q. Did you proceed to a point where everybody stopped the car?
A. Yes, we went south from Manteno on Route 50 and as they approached St. George Road the State Police and the County Police were there and they said they would stop the car and they radioed to let the car pass St. George Road and continue back to the Robert Hall Clothing Store.
Q. Did you participate in stopping the vehicle?
A. Yes.
Q. Did you help get the four people out of the car?
A. Yes.
Q. When you talked originally did you tell the dispatcher there were females also?
A. Yes, sir.

Q. Did you give a description of those females?
A. No, I don't believe I did. I don't believe he asked for a description of the females.
Q. When the vehicle was stopped did all four people get out of the car?
A. Yes, sir, they did.
[R118] Q. Was this at gunpoint?
A. Yes, sir.
Q. Did you participate in searching any of the persons?
A. Just patted them down as they got out of the vehicle.
Q. Did anybody say that they were under arrest to anyone?
A. When we got them out of the car?
Q. Yes.
A. No, sir. Not that I recall.
Q. As they were getting ut—after they were out of the car, did anyone do anything to the interior of the car at all?
A. Deputy Kuntz entered the car from the driver's side and started searching the car.
Q. All four occupants were out at this time?
A. Yes.
Q. Towards the front or back?
A. I believe all in front of the car.
Q. Was it a two-door or four-door car?
A. I believe two-door.
Q. And did you participate in looking in the car or searching the interior?
A. No, sir, I did not.
Q. Did you see anybody remove anything from the inside of the car?
A. Yes.
Q. What did you see?
A. Deputy Kuntz removed shells from the glove box and Lieutenant Ponton from the Sheriff's Office removed a .30 caliber [R119] sawed-off rifle from the driver's area of the vehicle—the front part of the vehicle.

Q. Now, after these items were removed, do you know what happened next?
A. At that time Captain Farthing was there and he ordered them taken to the County Jail and told me to bring one of them in to the County Jail, which I did. Other Officers took the others.
Q. Did you hear anyone ask permisison to search that car?
A. No, sir, I didn't.
Q. To your knowledge were any of the items taken from the interior of the car, the gun and shells, visible from outside the car when you came there to the scene?
A. Not that I saw, sir, no.
Q. You mentioned they had coats?
A. Yes, sir.
Q. The two males you saw?
A. Yes, sir.
Q. Were they coats or were they sweaters?
A. They appeared—I just seen them as I passed behind the car and they appeared to be dark-colored jackets.
Q. Did you get hold of them?
A. No, sir.
Q. Are you sure they were jackets as opposed to being sweaters?
A. No, sir. They appeared to be jackets.
[R120] THE COURT: They could have been sweaters?
A. Yes, sir, possibly.
Q. What footgear were they wearing?
A. They both had white shoes on.
Q. Had you had any description of shoes?
A. No, sir.
MR. KUESTER: That is all I have.

CROSS-EXAMINATION

By Mr. Herzog:

Q. Officer Sollers, about what time was it you first got the report from the Sheriff's Office?
A. Around 8:25.
Q. How about 8:45?
A. Yes, sir, in this area.

Q. Where were you when you first got the call?
A. On Route 50 at Manteno.
Q. Where is Robert Hall's at?
A. Approximately four and a half miles south on Route 50.
Q. Also on Route 50?
A. Yes, sir.
Q. What did you do when you first got the report?
A. I drove down to the south edge of Manteno—the Ruder Equipment Company, and pulled in and sat.
Q. You were looking for a vehicle?
A. A blue Roadrunner with white racing stripe, yes.
Q. This was daytime or nighttime?
A. Nighttime.
[R121] Q. Did you see a vehicle coming north on Route 50?
A. Yes.
Q. This was a purple Roadrunner was it?
A. Yes.
Q. Still nighttime?
A. Yes.
Q. How soon was that after you got the original report of the armed robbery at Robert Hall's?
A. I believe possibly ten minutes or so.
Q. What did you do when you saw that?
A. Followed it.
Q. Where to?
A. To the R & W Lounge in Manteno.
Q. And at the R & W you saw these people getting out of that vehicle?
A. Yes.
Q. That is when you called the Sheriff's Department?
A. Yes.
Q. This is when—Did you see any action with this other automobile after you went back to your vehicle?
A. Yes.
MR. KUESTER: Object. What automobile?
MR. HERZOG: The Roadrunner. The one you were following?
A. The purple Roadrunner.

Q. Did you see them come back to that car?
A. Yes.
[R122] Q. How long were they there at R & W?
A. I would say probably forty minutes maybe.
Q. After they got back to the vehicle what did they do?
A. Proceeded southbound on 50.
Q. What did you do?
A. I followed the car.
THE COURT: Officer, this description you got from the Sheriff's Office, did it match the description of this Roadrunner you were following?
A. The color was different. They had given out a blue 1970 Plymouth Roadrunner and the one I followed was purple—a Roadrunner.
Q. How about the stripe?
A. No, sir.
THE COURT: How about the license number?
A. When I got in behind the car the license was SA—and the numbers unknown, and in behind the purple Roadrunner it was RT6237.
Q. Did you ever get any other license number?
A. No, sir.
Q. Were you able to look on both sides of the vehicle for damage or racing stripe or was there damage?
A. When I first saw it I could only see the driver's side which would be the left side of the vehicle.
Q. And as you followed south on Route 50 did you notice anything unusual about the manner of driving?
[R123] A. They were driving quite slowly on Route 50 for a four-lane highway.
Q. About how slowly?
A. Twenty miles per hour at times we were down to.
Q. And the route they were taking would take them past Robert Hall's?
A. Yes.
Q. In fact, they were stopped very close to Robert Hall's?
A. Yes. Maybe fifty years [sic-yards] north of Robert Hall's on Route 50.
MR. HERZOG: No further questions.

REDIRECT EXAMINATION

By Mr. Kuester:

Q. What side of the car was this damage supposed to be on the dispatcher gave out?

A. They had given the damage out as being the right front, I believe.

Q. Now, when you say quite slowly, about twenty miles per hour at one point when you were following it?

A. Yes.

Q. Was this when the other squads were nearby?

A. No.

Q. Is there a minimum speed law on Route 50?

A. It is not posted.

Q. But the maximum is fifty-five?

A. Yes.

Q. But there is no minimum?

A. Not posted.

[R124] Q. Was it a foggy evening?

A. No.

Q. It wasn't? Was it clear?

A. Yes, sir.

MR. KUESTER: That is all I have.

RECROSS EXAMINATION

By Mr. Herzog:

Q. You told the Judge that you had read the rear license plate number?

A. Pardon me?

Q. You told the Judge you had read the rear license plate?

A. Yes.

Q. At that time did you know what the front license plate was?

A. No.

RE-REDIRECT EXAMINATION

By Mr. Kuester:

Q. At the R & W did you have occasion to see both license plates?

A. I drove around the car but I didn't notice the front.

Q. But it was such that you could have seen the plate if you wanted to look at it?

A. Yes.

Q. But you don't recall looking at it? Is that right?

A. Yes.

[R125] Q. Did you see any damage on the car?

A. No, sir.

Q. (Mr. Kuester) Did you see any white stripes on it?

A. No, sir.

THE COURT: Call you next witness. (witness excused)

MR. KUESTER: That is all the Defendants' evidence we have.

THE COURT: Mr. Herzog?

ARGUMENT ON PROSECUTOR'S ORAL MOTION TO DISMISS THE MOTION TO SUPPRESS AND THE TRIAL COURT'S RULING

MR. HERZOG: We move to dismiss on the basis of *Alderman* vs. *United States*, 394 U.S. 165. The Supreme Court says that as to the Fourth Amendment, there is no standing to contest its validity under these circumstances. It has to be the one whose rights are violated —the aggrieved party—by the introduction of damaging evidence. It wasn't their car. It wasn't their shells. It wasn't their rifle. I think the only one that has standing would be Johnette Clontz and she isn't here.

MR. KUESTER: She isn't charged in this at this time. And I don't think they have to admit these are their items. I think they do have a standing which they have shown.

THE COURT: What is the case?

MR. KUESTER: I don't have a case available, but just because you are not the owner of the car doesn't mean you can't be aggrieved by them trying to admit something against you in a court of law.

THE COURT: The only point here is exactly what counsel said. The case cited says exactly what he says it says. It says that Defendants like these have no standing to contest the validity of the search. It wasn't their car. They had no control over it and [R126] you don't have any case that says the contrary.

MR. KUESTER: I would like to tender a case.

THE COURT: There isn't any case that says contrary.

MR. KUESTER: I believe there are and I could locate some I believe. The whole standing area has been broadened and we are talking about the search of an automobile, the occupants and the fact you don't own it doesn't mean you can't be aggrieved and this stuff can't be used against you.

THE COURT: Well, I believe the law says what counsel says it says. These men have no standing to contest the validity of the search. It wasn't their car. They had no control over it. The only person that could complain would be the one who was driving it at the time or who owned the car.

Motion to Suppress is denied.

Defendants remanded to custody.

CIRCUIT COURT RECORD

No. 96 May 1, 1975

COURT OPENED PURSUANT TO ADJOURNMENT:

PRESENT: THE VICTOR N. CARDOSI, *Judge*

EDWARD P. DROLET, *State's Attorney*

LARRY HILDEBRAND, *Sheriff*

ROGER SERAFINI, *Clerk*

75-CF-425

PEOPLE OF THE STATE OF ILLINOIS

vs

FRANK L. RAKAS, LONNIE L. KING

ARMED ROBBERY

Now on this day, case called. Defendants present in their own proper person in custody of the Sheriff of Kankakee County with their attorney, Allan Kuester, Public Defender for Kankakee County. People represented by William Herzog, Assistant State's Attorney. Hearing called on Motion to Suppress Evidence. Witnesses sworn. Evidence heard. Motion to Suppress denied. Defendants remanded to the custody of the Sheriff of Kankakee County in default of bond. (CARDOSI)

IN THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D. 1977

No. 75-286

THE PEOPLE OF THE STATE OF ILLINOIS,
PLAINTIFF-APPELLEE,

vs.

FRANK L. RAKAS, LONNIE L. KING,
DEFENDANTS-APPELLANTS.

Appeal from the Circuit Court of
Kankakee County, Illinois

Honorable Patrick M. Burns, Presiding Judge.

OPINION—Filed March 23, 1977

MR. JUSTICE BARRY delivered the opinion of the court.

This is an appeal from the armed robbery convictions of Frank L. Rakas and Lonnie L. King following a jury trial in the Circuit Court of Kankakee County. Defendant Rakas was sentenced to sixteen (16) to thirty (30) years imprisonment and defendant King was sentenced to a term of imprisonment of eight (8) to twenty-four (24) years.

The incident which formed the basis of the multi-count indictment charged armed robbery against each defendant was an evening robbery of the Robert Hall clothing store in Bourbonnais, Illinois, on February 4, 1975. One count charged the defendants with taking property from the cashier of the store, another with taking the ignition key to the car of Billy Glenn Woods, a stock-boy, at the store, and a final count with taking the automobile belonging to Woods. Defendants contend that the court erred in entering judgments of conviction upon all three armed robbery offenses because they claim the charges

arose from a single course of conduct. The State concedes that under the authority of *People* v. *Whittington* (1970), 46 Ill. 2d 405, 265 N.E.2d 679, the trial court should not have entered judgments of conviction on both the counts charging defendants with armed robbery of the ignition key and the automobile belonging to Woods, (Counts II and III of the indictment). Both of those charges did arise out of the same conduct and in time and motivation were not separate and distinct offenses. Of those two only the judgment of conviction on the armed robbery of Woods' automobile (Count III) should stand. The judgment of conviction of armed robbery of the cashier at the Robert Hall store was a separate distinct offense from the armed robbery of the automobile. Although the other two robberies coincided in time they were of two separate persons and with a separate distinct motivation for each. We find no error in entering judgments of convictions based on those two charges of armed robbery. (*People* v. *Grady* (4th Dist., 1976), —— Ill. App. 3d ——, 357 N.E.2d 230). Several Illinois cases have found that a criminal defendant can be convicted and sentenced for more than one armed robbery when property is taken simultaneously from more than one victim. (*People* v. *Butler* (1976), —— Ill. 2d ——, 356 N.E.2d 330; *People* v. *Prim* (1972), 53 Ill. 2d 63, 289 N.E.2d 601; *People* v. *Perry* (5th Dist., 1976), 38 Ill. App. 3d 517, 347 N.E.2d 869). We agree.

Of the other issues raised by defendants several can be summarily decided. Firstly, defendants argue that the trial court erred in denying their motion to suppress evidence seized during an unlawful search of an automobile not belonging to neither of the defendants but in which they were riding as passengers of a girl friend. We conclude, as the trial court did, that the defendants lacked standing to complain of the allegedly unlawful search and seizure. Several recent Illinois cases have well established that without a proprietary or other similar interest in an automobile, a mere passenger therein lacks standing to challenge the legality of the search of the vehicle. (See, *People* v. *French* (1965), 33 Ill. 2d 118, 210 N.E.2d 540, (car searched belonged to defendant's friend

and owner did not consent to the search); *People* v. *Pohlmann* (4th Dist., 1973), 13 Ill. App. 3d 779, 300 N.E.2d 302, (where defendant not owner and not present at time of search); *People* v. *Almerdo* (1st Dist., 1976), 39 Ill. App. 3d 197, 350 N.E.2d 191, (where car was stolen); *People* v. *Washington* (2nd Dist., 1976), —— Ill. App. 3d ——, 354 N.E.2d 501, (where car belonged to defendant's girlfriend); *People* v. *Glanton* (1st Dist., 1975), 33 Ill. App. 3d 124, 338 N.E.2d 30, (where defendant not owner, not present, and had no control over garage searched; and *People* v. *Haflin* (2nd Dist., 1976), 40 Ill. App. 3d 635, 351 N.E.2d 594, (search of defendant's car; brother of defendant controlling and consenting)). We believe that defendants failed to establish any prejudice to their own constitutional rights because they were not persons aggrieved by the unlawful search and seizure. The search and seizure was not directed against the defendants and they were not victims of it. They wrongly seek to establish prejudice only through the use of evidence gathered as a consequence of a search and seizure directed at someone else and fail to prove an invasion of their own privacy. (*Alderman* v. *United States* (1969), 394 U.S. 165, 89 S. Ct. 961, 22 L. Ed. 2d 176).

Defendants also contend that the evidence failed to prove beyond a reasonable doubt that defendants were the perpetrators of the armed robbery charged. The thrust of their argument is based on the occurrence witnesses' inability to see the masked robbers' features, and that only Bill Woods could identify the rifle recovered as the one used in the robbery. The defendants also claim that the fact the denominations and amount of money found on defendants and their female companions were similar to the amount taken in the robbery was not incriminating, and that the lack of other circumstantial evidence because of the failure to find any masks or other clothes allegedly used in the robbery on defendants' persons or discarded along the highway eliminated the possibility of guilt beyond a reasonable doubt. We have viewed the record and are convinced that the identification testimony of the occurrence witnesses and the other circumstantial evidence was not doubtful or conflicting and supports the jury's guilty verdicts. It is not the duty of a reviewing court to substitute its judgment as to the weight of disputed evidence or the credibility of witnesses for the jury. That function is for the trier of fact who heard the evidence presented and observed the demeanor of the witnesses. (*People* v. *Novotny* (1969), 41 Ill. 2d 401, 244 N.E.2d 182). The evidence here was not so improbable or so unsatisfactory as to raise a reasonable doubt of guilt.

Defendants present the issue of whether they were unfairly prejudiced by allegedly improper closing argument of the prosecutor. The prosecutor, over the objection of defendants' counsel, argued in closing that the defendants retained the rifle, instead of discarding it like the clothing allegedly used in the robbery, because it was valuable, and defendants could "use it in other armed robberies". The prosecutor made those remarks in response to the defendants' counsel injecting the subject matter during closing argument. We believe that the defense counsel provoked a part of the State's improper argument. The defendants have not persuaded us that the comment although improper, would have caused the jury to reach a different verdict had the comment not been made. The error, here, did not contribute to defendant's conviction and was clearly harmless error. (*Harrington* v. *California* (1969), 395 U.S. 250, 89 S. Ct. 19726, 23 L. Ed 2d 284; *Chapman* v. *California* (1967), 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed 2d 705; *People* v. *Mostert* (3rd Dist, 1976), 34 Ill. App. 3d 767, 340 N.E. 2d 300). Defendants also find error with the prosecutor's comment that the evidence indicated that one of the robbers had a southern accent. Defendants' contention is that the comment was an improper comment upon facts not in the record. From an examination of the record it appears that although testimony concerning one of the robbers having a southern accent "like southern Illinois" was objected to by the defense, only the portion referring to southern Illinois was sustained and stricken.

The testimony concerning a southern accent generally was not stricken and no further objection was made. The argument is without merit as the prosecutor may comment upon facts preserved in the record.

The final claim of error is that the trial court erred in refusing to give Illinois Pattern Jury Instruction—Criminal No. 3.02 in its entirety. The State tendered and the court gave the first paragraph of IPI-Criminal No. 3.02. The court refused however to give the second paragraph, which provides:

> "You should not find the defendant guilty unless the facts and circumstances proved exclude every reasonable theory of innocence."

The committee comments to the Pattern Jury Instructions state that the second paragraph to IPI-Criminal No. 3.02 should be given only when the proof of guilt is *entirely* circumstantial. Defendants argue that the proof of guilt in the instant case was entirely circumstantial. Without an extended discussion of the dichotomy between direct and circumstantial evidence, we believe there was some direct evidence in the form of the gun found with defendants and identified by a prosecution witness as the one used in the robbery. Because there was some direct evidence the court was correct in refusing to give the second paragraph of IPI-Criminal No. 3.02. (*People* v. *Minish* (3rd Dist, 1974), 19 Ill. App. 3d 603, 312 N.E.2d 49; *People* v. *Bolton* (3rd Dist, 1976, 35 Ill. App. 3d 965, 343 N.E.2d 190; *People* v. *Fletcher* (3rd Dist, 1976), —— Ill. App. 3d ——, 352 N.E.2d 10).

Accordingly the judgments of conviction of defendants on Count II of the indictment are reversed, while the judgments of conviction and sentences imposed on the other counts of the indictment are affirmed in all respects.

Reversed in part and affirmed in part.

STENGEL, P.J. and SCOTT, J., concur.

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

ORDER DENYING REHEARING

Be it Remembered, That, to wit: On the 13th day of April, 1977 certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

75-286

PEOPLE OF THE STATE OF ILLINOIS, APPELLEE

vs.

FRANK L. RAKAS AND LONNIE L. KING, APPELLANTS

Appeal from Kankakee County

75-CF-425

Hon. Patrick M. Burns

Now on this day this cause coming on for hearing upon the petition for a rehearing filed herein, and the Court having duly considered said petition, as well as the matters and things alleged in support thereof, and being now fully advised in the premises;

It is therefore ordered by the Court that said petition for a rehearing herein, be and the same hereby is overruled and denied and that said petitioner pay the costs and charges herein taxed.

NOTIFICATION OF DENIAL OF PETITION FOR LEAVE TO APPEAL BY SUPREME COURT OF ILLINOIS

STATE OF ILLINOIS
OFFICE OF CLERK OF THE SUPREME COURT
SPRINGFIELD 62706

September 30, 1977

State Appellate Defender
Third Judicial District
628 Columbus Street
Suite 308
Ottawa, Illinois 61350

No. 49468—People State of Illinois, respondent, vs. Frank L. Rakas, et al., petitioners. Leave to appeal, Appellate Court, Third District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell C. Woods
Clerk of the Supreme Court

SUPREME COURT OF THE UNITED STATES

No. 77-5781

FRANK L. RAKAS AND LONNIE L. KING, PETITIONERS

v.

ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO the Appellate Court, Third District Court of the State of Illinois.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 20, 1978

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